

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

GLORIA BRADFORD, et al.

PLAINTIFFS

VS.

CASE NO. 4:05-CV-4075

UNION PACIFIC RAILROAD  
COMPANY

DEFENDANT

**ORDER**

Before the Court is Plaintiffs' Motion to Dismiss. (Doc. 126). Plaintiffs seek a voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(2) without prejudice to refiling. Defendant Union Pacific Railroad Company ("Union Pacific") has responded. (Doc. 127). Plaintiffs have replied to Union Pacific's response. (Doc. 128). The matter is ripe for consideration.

In their motion, Plaintiffs argue that the Court, having denied class certification, no longer retains jurisdiction over this matter. The Court disagrees. Jurisdiction before this Court was proper at the institution of suit, and subsequent events have not divested the Court's jurisdiction. *See Genenbacher v. CenturyTel Fiber Co. II, LLC*, 500 F.Supp. 2d 1014, 1015 (C.D. Ill. 2007)(citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 291, 58 S.Ct. 586, 82 L.Ed. 845 (1938)).

However, the Court is satisfied that this matter should be dismissed at Plaintiffs' urging and that the dismissal be without prejudice. In ruling on federal preemption (Doc. 112) and class certification, (Doc. 122) the Court did not reach the merits of Plaintiffs' claims. The Court is hesitant to foreclose those claims before they have been heard on their merits.

Accordingly, Plaintiffs' Motion to Dismiss should be and hereby is **GRANTED**. This matter is hereby **DISMISSED WITHOUT PREJUDICE** on the express condition that before this matter may be refiled in any forum or jurisdiction, Plaintiffs will be ordered to pay any costs and expenses,

including reasonable attorney fees, Union Pacific incurred in defending this matter.

**IT IS SO ORDERED**, this 7th day of April, 2008.

/s/ Harry F. Barnes  
Hon. Harry F. Barnes  
United States District Judge